

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
7

8 JUAN HERNANDEZ,

9 Plaintiff,

10 v.

11 CAROLYN W. COLVIN, Commissioner
12 of Social Security Administration,
13 Defendant.

NO. 1:15-cv-03206-SAB

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT;
REMANDING CASE**

16 Before the Court are Plaintiff's Motion for Summary Judgment, ECF No.
17 15, and Defendant's Motion for Summary Judgment, ECF No. 23. The motions
18 were heard without oral argument. Plaintiff is represented by D. James Tree.
19 Defendant is represented by Assistant United States Attorney Timothy Durkin and
20 Special Assistant United States Attorney Tina Saladino.

21 The Court has reviewed the parties' briefing as well as the administrative
22 record, ECF No. 12. For the reasons set forth below, the Court **grants** Plaintiff's
23 motion, **denies** Defendant's motion, **reverses** the administrative law judge
24 ("ALJ"), and **remands** for additional proceedings consistent with this Order.

25 **I. Jurisdiction**

26 On December 6, 2011, Plaintiff filed a Title II application for disability
27 insurance benefits (DIB) and also filed a Title XVI application for supplemental
28 security income (SSI) on the same day. Plaintiff alleged he is disabled beginning

1 June 1, 2008, due to ankle problems, back problems, vision problems, sleep apnea,
 2 carpal tunnel syndrome, hypertension, obesity and diabetes.¹

3 His application was denied initially on February 8, 2012, and again denied
 4 on reconsideration on July 26, 2012. A timely request for a hearing was made. On
 5 December 4, 2013, Plaintiff appeared at a hearing held in Yakima, Washington
 6 before Administrative Law Judge (ALJ) Timothy Mangrum. Trevor Duncan,
 7 vocational expert, also participated. Plaintiff was represented by Tim Anders, a
 8 non-attorney representative.

9 The ALJ issued a decision on May 7, 2014, finding that Plaintiff was not
 10 disabled. Plaintiff timely requested review by the Appeals Council, which denied
 11 his request for review on October 15, 2015. The Appeals Council's denial of
 12 review makes the ALJ's decision the final decision of the Commissioner. 42
 13 U.S.C. §405(h).

14 Plaintiff filed a timely appeal with the U.S. District Court for the Eastern
 15 District of Washington on December 14, 2015. The instant matter is before this
 16 Court pursuant to 42 U.S.C. § 405(g).

17 **II. Sequential Evaluation Process**

18 The Social Security Act defines disability as the "inability to engage in any
 19 substantial gainful activity by reason of any medically determinable physical or
 20 mental impairment which can be expected to result in death or which has lasted or
 21 can be expected to last for a continuous period of not less than twelve months."
 22 42 U.S.C. § 423(d)(1)(A). A claimant shall be determined to be under a disability
 23 only if his impairments are of such severity that the claimant is not only unable to
 24 do his previous work, but cannot, considering claimant's age, education and work
 25 experiences, engage in any other substantial gainful work which exists in the
 26 national economy. 42 U.S.C. §423(d)(2)(A).

27

28¹ At the hearing, the alleged onset date was amended to February 6, 2011.

1 The Commissioner has established a five-step sequential evaluation process
 2 for determining whether a person is disabled. 20 C.F.R. § 416.920(a)(4); *Bowen v.*
 3 *Yuckert*, 482 U.S. 137, 140-42 (1987).

4 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R. §
 5 416.920(b). Substantial gainful activity is work done for pay and requires
 6 compensation above the statutory minimum. 20 C.F.R. § 416.972(a); *Keyes v.*
 7 *Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in
 8 substantial activity, benefits are denied. 20 C.F.R. § 416.971. If he is not, the ALJ
 9 proceeds to step two.

10 Step 2: Does the claimant have a medically-severe impairment or
 11 combination of impairments? 20 C.F.R. § 416.920(c). If the claimant does not
 12 have a severe impairment or combination of impairments, the disability claim is
 13 denied. A severe impairment is one that lasted or must be expected to last for at
 14 least 12 months and must be proven through objective medical evidence. 20
 15 C.F.R. § 416.909. If the impairment is severe, the evaluation proceeds to the third
 16 step.

17 Step 3: Does the claimant's impairment meet or equal one of the listed
 18 impairments acknowledged by the Commissioner to be so severe as to preclude
 19 substantial gainful activity? 20 C.F.R. § 416.920(d); 20 C.F.R. § 404 Subpt. P.
 20 App. 1. If the impairment meets or equals one of the listed impairments, the
 21 claimant is conclusively presumed to be disabled. *Id.* If the impairment is not one
 22 conclusively presumed to be disabling, the evaluation proceeds to the fourth step.

23 Before considering Step 4, the ALJ must first determine the claimant's
 24 residual functional capacity. 20 C.F.R. § 416.920(e). An individual's residual
 25 functional capacity is his ability to do physical and mental work activities on a
 26 sustained basis despite limitations from his impairments.

27 Step 4: Does the impairment prevent the claimant from performing work he
 28 has performed in the past? 20 C.F.R. § 416.920(f). If the claimant is able to

1 perform his previous work, he is not disabled. *Id.* If the claimant cannot perform
 2 this work, the evaluation proceeds to the fifth and final step.

3 Step 5: Is the claimant able to perform other work in the national economy
 4 in view of his age, education, and work experience? 20 C.F.R. § 416.920(g).

5 The initial burden of proof rests upon the claimant to establish a *prima facie*
 6 case of entitlement to disability benefits. *Tackett v. Apfel*, 108 F.3d 1094, 1098
 7 (9th Cir. 1999). This burden is met once a claimant establishes that a physical or
 8 mental impairment prevents him from engaging in his previous occupation. *Id.* At
 9 step five, the burden shifts to the Commissioner to show that the claimant can
 10 perform other substantial gainful activity. *Id.*

11 **III. Standard of Review**

12 The Commissioner's determination will be set aside only when the ALJ's
 13 findings are based on legal error or are not supported by substantial evidence in
 14 the record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)
 15 (citing 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
 16 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."
 17 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th Cir. 1975). Substantial
 18 evidence is "such relevant evidence as a reasonable mind might accept as adequate
 19 to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the
 20 ALJ's denial of benefits if the evidence is susceptible to more than one rational
 21 interpretation, one of which supports the decision of the administrative law judge.
 22 *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir. 2004). "If the evidence can
 23 support either outcome, the court may not substitute its judgment for that of the
 24 ALJ." *Matney*, 981 F.2d at 1019.

25 A decision supported by substantial evidence will be set aside if the proper
 26 legal standards were not applied in weighing the evidence and making the
 27 decision. *Brawner v. Secretary of Health & Human Servs.*, 839 F.2d 432, 433 (9th
 28 Cir. 1988). An ALJ is allowed "inconsequential" errors as long as they are

1 immaterial to the ultimate nondisability determination.” *Stout v. Comm'r, Soc. Sec.*
 2 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006).

3 **IV. Statement of Facts**

4 The facts have been presented in the administrative transcript and the ALJ’s
 5 decision and will only be summarized here.

6 At the time of the hearing, Plaintiff was 36 years old. He does not have a
 7 high school diploma or a GED. Plaintiff has previously worked in a warehouse,
 8 farm labor, and his last attempt at employment was with a company building RVs.

9 He has carpal tunnel syndrome in his right hand. Surgery was performed,
 10 but his symptoms did not improve. He received steroid injections, but he continues
 11 to have pain, numbness, and stiffness in the center of his hands and the tips of his
 12 fingers and thumbs. He testified that if he uses his hand, it requires several days to
 13 recover. Plaintiff also suffers from severe sleep apnea. He has fallen asleep in the
 14 car and has experienced four motor vehicle accidents. Because of this, he no
 15 longer drives. Because of the sleep apnea, he has headaches and takes frequent
 16 naps. Doctors have prescribed a BiPAP machine, but his insurance has continued
 17 to deny him one and he does not have any income to purchase it on his own.

18 Plaintiff also has left knee pain. He received a cortisone injection but it only
 19 helped for three days. He reports instability and pain with multiple movements.
 20 His insurance denied surgery on his left knee even though his orthopedic doctor
 21 recommended it. He did have surgery on his right knee to fix a bucket tear in the
 22 meniscus. He also has degenerative changes in his lumbar spine and testified that
 23 he experiences back pain.

24 Finally, Plaintiff is morbidly obese. At times, he has been able to lose some
 25 weight, but has not been able to maintain the weight loss.

26 **V. The ALJ’s findings**

27 Initially, the ALJ found Plaintiff met the insured status requirements of the
 28 Social Security Act through June 30, 2013. (Tr. 22.)

1 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
 2 activity since February 6, 2011, the amended alleged onset date.. (Tr. 22.)

3 At step two, the ALJ found Plaintiff has the following severe impairments:
 4 degenerative disc disease; degenerative joint disease, bilateral knees (mild); sleep
 5 apnea. (Tr. 22.) The ALJ concluded that Plaintiff's impairments of obesity, carpal
 6 tunnel syndrome, diabetes and hypertension were non-severe. (Tr. 22.)

7 At step three, the ALJ found that Plaintiff's impairments or combination of
 8 impairments do not meet or medically equal Listing 12.01 (Major Dysfunction of
 9 the Joint), 12.04 (Disorders of the Spine), or Listing 3.10 (Sleep Apnea). (Tr. 23.)

10 The ALJ concluded that Plaintiff has the residual functional capacity to
 11 perform light work except he can occasionally kneel, crawl, frequently stoop, and
 12 frequently handle and finger. (Tr. 24.)

13 At step four, the ALJ found Plaintiff was not capable of performing any past
 14 relevant work. (Tr. 27.) The ALJ noted that Plaintiff had past relevant work as an
 15 assembler; farm worker (fruit); installer; material handler; and stock clerk. (Tr.
 16 27.)

17 At step five, the ALJ found there were jobs that exist in significant numbers
 18 in the national economy that Plaintiff can perform. (Tr. 28.) Because Plaintiff's
 19 ability to perform work at the full range of light work was compromised by
 20 nonexertional limitations, the ALJ relied on the vocational expert's testimony that
 21 Plaintiff would be able to perform the requirements of representative occupations
 22 such as: cashier, delivery driver, mail clerk. In doing so, the ALJ concluded that
 23 Plaintiff was not disabled under section 1614(a)(3)(A) of the Social Security Act.

24 **VI. Issues for Review**

25 1. Did the ALJ properly evaluate the opinions of Plaintiff's treating
 26 doctor?

27 2. Did the ALJ properly evaluate Plaintiff's symptom testimony?

1 3. Did the ALJ properly evaluate Plaintiff's obesity and carpal tunnel
2 syndrome?

3 4. Did the ALJ properly determine Plaintiff's RFC assessment regarding
4 Plaintiff's manipulative limitations?

5 5. If the ALJ erred in making its determination, was the error harmless?

6 **VII. Discussion**

7 Here, even a cursory review of the record indicates the ALJ erred in failing
8 to adequately consider the effect of Plaintiff's obesity on his other impairments.
9 The only mention of Plaintiff's obesity by the ALJ was in the finding that it was a
10 non-severe impairment at step two. It is clear the ALJ did not consider the effect
11 of Plaintiff's obesity on his other impairments when assessing his RFC.

12 The ALJ erred in failing to find that Plaintiff's obesity is a "severe"
13 impairment. An impairment is "non-severe" only if it is a slight abnormality (or
14 combination of slight abnormalities) that has no more than a minimal effect on the
15 individual's ability to do basic work activities. *Webb v. Barnhart*, 433 F.3d 683,
16 688 (9th Cir. 2005). Here, Plaintiff's treating doctor repeatedly opined that
17 Plaintiff's excess weight contributed to his medical conditions. *See* Tr. 345, 347,
18 348. The record also indicates that Plaintiff experienced edema in the bilateral
19 lower extremities on several occasions. (Tr. 301, 382, 566.) The ALJ erred when it
20 did not consider whether Plaintiff's obesity alone and in combination with his
21 other impairments was severe, and erred in failing to assess the functional
22 limitations from obesity alone and in combination with other impairments.
23 Notably, the ALJ failed to consider the effect of Plaintiff's obesity as it related to
24 his level of pain caused by the carpal tunnel syndrome and knee and back pain. At
25 the minimum, if the ALJ thought that Plaintiff's obesity had not resulted in
26 limitations on his ability to work, it needed to explain how it reached that
27 conclusion. *See Arnett v. Astrue*, 676 F.3d 586, 593 (7th Cir. 2012).

1 Second, the ALJ erred in failing to make a thorough evaluation of Plaintiff's
 2 hand impairments. The ALJ failed to consider relevant evidence, including that
 3 fact that surgery was performed but was deemed unsuccessful. Consequently, its
 4 finding that Plaintiff's carpal tunnel syndrome was non-severe is not supported by
 5 the record.

6 Even if Plaintiff's carpal tunnel syndrome or obesity was non-severe, the
 7 ALJ erred in failing to properly incorporate his manipulative limitations (caused
 8 either by the CTS or obesity) when it determined Plaintiff's RFC. *See Orn v.*
 9 *Astrue*, 496 F.3d 625, 629 (9th Cir. 2007)(citing to 42 U.S.C. § 423(d)(2)(B): "In
 10 determining whether an individual's . . . impairments are of a sufficient medical
 11 severity that such . . . impairments could be the basis of eligibility under this
 12 section, the Commissioner of Social Security shall consider the combined effect of
 13 all of the individual's impairments without regard to whether any such
 14 impairment, if considered separately, would be of such severity.")).

15 Finally, it failed to discuss and address limitations caused by Plaintiff's
 16 severe sleep apnea.

17 With respect to Plaintiff's credibility, the ALJ did not support its adverse
 18 credibility determination with clear and convincing reasons. Here, the medical
 19 evidence establishes diagnoses of carpal tunnel syndrome, sleep apnea and knee
 20 dysfunction that could reasonably produce the symptoms he described. Also, the
 21 daily activities described by Plaintiff do not support a conclusion that he would be
 22 able to spend a substantial part of his day engaged in these activities. Moreover, he
 23 testified to significant limitations in his daily activities. His doctor's advice that he
 24 engage in exercise, including walking, does not suggest his doctors believed such
 25 exercise would include gripping, handling, and fingering, which the ALJ so
 26 concluded to support a finding that Plaintiff's testimony was not credible. Finally,
 27 the ALJ misconstrued the record when it relied on Plaintiff's failure to use his
 28 prescribed CPAP machine to find him not credible. A closer reading of the record

1 demonstrates that Plaintiff tried on numerous occasions to use his machine, but he
2 was unable to afford the BiPAP machine prescribed by his doctors.

3 These errors were not harmless and remand is necessary for the
4 Commissioner to properly evaluate the medical evidence and consider the effect of
5 Plaintiff's obesity and manipulation limitations on his RFC.

6 **VIII. Conclusion**

7 The ALJ committed clear error in concluding that Plaintiff's obesity and
8 carpal tunnel syndrome were non-severe, and also committed clear error in failing
9 to account for these impairments in determining Plaintiff's RFC and in failing to
10 address the limitations caused by Plaintiff's severe sleep apnea. Remand is
11 necessary to permit the Commissioner to properly review the record to determine
12 whether Plaintiff is disabled.

13 Accordingly, **IT IS HEREBY ORDERED:**

14 1. Plaintiff's Motion for Summary Judgment, ECF No. 15, is **GRANTED**.

15 2. Defendant's Motion for Summary Judgment, ECF No. 23, is **DENIED**.

16 3. The decision of the Commissioner denying benefits is **reversed** and
17 **remanded** to the Social Security Administration for further administrative
18 proceedings consistent with this Order.

19 4. The District Court Executive is directed to enter judgment in favor of
20 Plaintiff and against Defendant.

21 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
22 file this Order and provide copies to counsel.

23 **DATED** this 13th day of December, 2016.



24
25
26
27 A handwritten signature in blue ink that reads "Stanley A. Bastian".
28

Stanley A. Bastian
United States District Judge

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT; REMANDING CASE ~ 9**